

9-A-1

CITY OF NEWARK  
DELAWARE

CITY SOLICITOR'S OFFICE

August 2, 2007

TO: Dennis McFarland, Finance Director  
FROM: Roger A. Akin, City Solicitor *RAA*  
RE: Assignment of Right of Direct Claims to PJM

You have provided my office with a memorandum from Patrick McCullar, President of DEMEC, to each DEMEC member regarding the above subject. Attached to that memo is a draft form of assignment which would effectively grant PJM a right of direct claim against each DEMEC member rather than against DEMEC itself should there be a default by DEMEC of payment obligations.

One benefit of a grant of such assignment would be to relieve the burden which now rests on DEMEC (and its member municipalities) to pay a significant extra cost to secure an additional \$10 million in the form of a letter of credit from DEMEC to PJM. One disadvantage of agreeing to the assignment would be to change the form of dispute resolution should there be a dispute as to the obligations of DEMEC or its members. Our current arrangement with DEMEC provides for mandatory arbitration to resolve disputes. PJM is insisting that (presumably) litigation rather than arbitration would resolve disputes. (This may or may not be the result of a perception by PJM that an arbitrator would tend to favor a municipality over PJM.)

I have now spoken with David Swayze, Esq., DEMEC counsel, regarding the draft assignment at some length. We do not believe that the assignment would expose the City to any claim or obligation which the City has not already assumed. I am informed that no other DEMEC member has raised an objection to the assignment document. You have advised that, to date, there have been no claims by DEMEC regarding member billings under the PJM relationship.

We are therefore recommending that City Council favorably consider the assignment in its present form. There is a form of draft ordinance or resolution attached to the assignment document which is recommended for passage. As



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with other contractual relations entered into by the City, we believe that a resolution, rather than an ordinance, would be the proper vehicle to accomplish that result.

Please let me know if there are questions.

Thank you.

RAA:pmf

Attachment

cc: Carl F. Luft, City Manager

Susan A. Lamblack, City Secretary



**CITY OF NEWARK  
DELAWARE**

**RESOLUTION NO. 07-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO  
ENTER INTO AN ASSIGNMENT OF CERTAIN OF THE CITY'S  
OBLIGATIONS OWED TO THE DELAWARE MUNICIPAL  
ELECTRIC CORPORATION**

WHEREAS, the City of Newark ("NEWARK") is a Participating Member of the Delaware Municipal Electric Corporation ("DEMEC") and a signatory, along with all other participating member municipalities, to a certain Agreement for Full Requirements Service, Power Sales, Transmission and Agency Services dated October, 2003 ("DEMEC Agreement"); and

WHEREAS, DEMEC is a party to various agreements with PJM Interconnection, LLC ("PJM") with respect to the supply of electricity to the Newark and each of the other participating members, which Agreements, inter alia, require DEMEC to maintain a line of credit sufficient to assure PJM that DEMEC has adequate resources to pay for the purchase of the required supply of electricity; and

WHEREAS, under Section 3.6 of the DEMEC Agreement, the participating members are obligated to see that DEMEC has at all times sufficient financial resources to meet its contractual obligations to PJM; and

WHEREAS, PJM has made demand on DEMEC, in connection with a required increase in DEMEC's line of credit necessitated by a significant increase in demand for electricity supply among the participating members, for the provision of additional security in a form satisfactory to PJM, with specific reference to the execution of guarantees or pledges of the full faith and credit of and by Newark and each of the other participating members in favor of PJM; and

WHEREAS, PJM is willing to accept in lieu of such guarantees or pledges an assignment of Newark's existing obligation to DEMEC to assure that DEMEC has sufficient financial resources to meet its contractual obligations to PJM; and

WHEREAS, the Council of the City of Newark, in order to continue to assure a reliable and affordable supply of electricity for the citizens of the City of Newark, finds that it is in the best interest of to execute such an assignment along with each of the other participating members in favor of PJM;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEWARK, DELAWARE, that the City Manager is hereby authorized to



enter into an Assignment among Newark, the other participating members, DEMEC, and PJM in substantially the form attached hereto, assigning as authorized by Section 12 of the Agreement its obligation under Section 3.6 of the Agreement to assume responsibility pro rata for all costs incurred by DEMEC in the event of a default by DEMEC of its contractual obligations to PJM.

BE IT FURTHER RESOLVED, that the City Manager shall take such further actions in the premises as are necessary to bind and commit Newark to the Assignment.

RESOLVED at a Regular Meeting of Council on \_\_\_\_\_, 2007.

VOTE: \_\_\_\_\_ to \_\_\_\_\_.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Secretary



## ATTACHMENT

### ASSIGNMENT

NOW COME the parties to this Agreement of Assignment (the "ASSIGNMENT"), being the DELAWARE MUNICIPAL ELECTRIC CORPORATION ("DEMEC") and the municipal members of DEMEC, (City of Newark, Town of Smyrna, Town of Middletown, City of Lewes, Town of Clayton, City of New Castle and City of Milford) (collectively, the "Participating Members", and, together with DEMEC, the "Assignors"), and do represent for themselves and for the express benefit of PJM Interconnection, LLC ("PJM") as follows:

WHEREAS, DEMEC is the exclusive provider of all capacity, energy, transmission, ancillary services, and other services necessary to supply the Participating Members with all of their energy requirements under the individually executed Agreements for Full Requirements Service, Power Sales, Transmission, and Agency Services ("Members' Agreements"); and

WHEREAS, DEMEC is a party to the PJM Open Access Transmission Tariff, PJM Operating Agreement, and/or the PJM Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area, (the "Agreements"), for the purchase of capacity, energy, transmission, ancillary services and other services; and

WHEREAS, to assure from time to time the uninterrupted supply of such energy and services to the Participating Members, DEMEC has requested from PJM, and PJM has granted to DEMEC an unsecured line of credit in the amount of \$8,000,000, which amount may vary from time to time pursuant to the Agreements; and

WHEREAS, because of a substantial increase in demand among the Participating Members for the energy and services, DEMEC has in turn increased its purchase of same from PJM, which necessitates an increase in the DEMEC available line of credit; and

WHEREAS, as a condition precedent to the increase in DEMEC's available line of credit, and in accordance with the agreements, PJM is requiring DEMEC to post additional financial security in an amount and form satisfactory to PJM; and

WHEREAS, in evaluating DEMEC's creditworthiness and financial strength in order to determine whether to increase the DEMEC line of credit, PJM, consistent with its credit policies, has considered, among other factors, the obligations of the Participating Members under the Members' Agreements to provide the necessary financial resources to DEMEC to enable DEMEC to meet its contractual obligations ; and



WHEREAS, the Participating Members are not empowered to pledge their full faith and credit to the repayment of the debt of DEMEC; and

WHEREAS, it is in the best interests of the Participating Members to assure that DEMEC has all the financial resources necessary to fulfill its supply obligations to the Participating Members; and

WHEREAS, pursuant to Section 3.6 of the Member's Agreements, each Participating Member "...acknowledges and agrees that it is ultimately responsible for all costs incurred by DEMEC to supply Full Requirements Service to Participating Member."

NOW, THEREFORE, do the Assignors covenant and agree in consideration of the mutual covenants and benefits herein above and hereinafter recited as follows:

1. In the event DEMEC shall, as determined by PJM, default in its obligation to under the Agreements, including, but not limited to, any payment obligations under the Agreements, then PJM shall have all right and authority to make demand upon, and to receive payment from, each Participating Member in the proportion owed, as set forth on Exhibit A hereto, the full amount of such sums in default, together with interest thereon and costs of recovery thereof, if any, as provided for in the Agreements.
2. In order to more fully secure the obligation arising hereunder on behalf of the Participating Members in favor of PJM, and in order to induce PJM to increase the DEMEC line of credit as hereinabove described, the Participating Members, and each of them, do hereby consent and agree pursuant to Section 12 of the Members' Agreements to assign, and do hereby assign, to PJM all right and authority granted to DEMEC therein to enforce the obligation of each Participating Member to pay its proportionate share of the amount then in default to PJM.
3. Any claim interposed by PJM hereunder against Participating Members shall be deemed to have arisen by reason of a default under Sections 8 and 9 of the Member's Agreements, and the terms of Section 18 thereof regarding mandatory arbitration shall therefore not be applicable.
4. The obligations of each of the Assignors as set forth in their respective Member's Agreement represent valid and binding obligations of each of the Assignors. None of the Assignors is aware of any breach or default of any obligation under the Members' Agreement. The Assignors shall provide not less than 3 days written notice to PJM of any default, breach, termination, amendment or modification of the Member's Agreement by any party thereto, which default,



breach, termination, amendment or modification may, in PJM's sole discretion, result in a default by DEMEC under the Agreements.

5. By entering into this Assignment, the Assignors acknowledge and agree that the Members' Agreements are hereby amended as necessary to accommodate the right of enforcement upon default granted to PJM hereunder, and a copy of this Assignment shall be identified in the Members' Agreements and made part thereof as an exhibit thereto.

6. This Assignment and the rights accorded to the PJM shall be governed by the laws of Delaware without reference to its conflict of law doctrines.

7. This Assignment may be executed in counterparts.

8. PJM shall not be bound by any provision of the Member's Agreements, whether or not explicitly referenced in this document, nor shall any such provision affect any right that PJM may have under this document or the Agreements to pursue remedies against DEMEC.

9. Nothing contained herein shall be deemed a waiver or modification of any of PJM's rights or remedies under the Agreements. In the event of any conflict between this Assignment and the Agreements, the terms of the Agreements shall govern.

IN WITNESS WHEREOF, the Parties hereto, having secured all necessary approvals of their respective governing bodies, certified copies of which are appended hereto and made part hereof as Exhibit B 1 through 7, have caused this Assignment to be executed, intending to be fully bound thereby by the terms of the Assignment, as of this \_\_\_\_ day of \_\_\_\_\_, 2007.

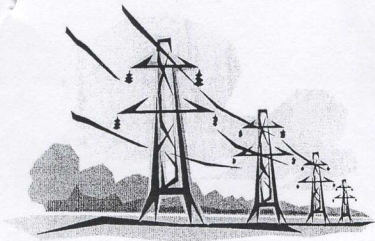
**For Delaware Municipal Electric Corporation, Inc.:**

\_\_\_\_\_  
Patrick E. McCullar, President & CEO

**For Participating Member:**

\_\_\_\_\_  
Name/Title: Carl F. Luft, City Manager  
\_\_\_\_\_  
City of Newark, Delaware





# DEMEC

## Delaware Municipal Electric Corporation

217 Artisan Drive, Smyrna, Delaware 19977 302 653-2733 Fax 302 653-2734

July 10, 2007

TO: DEMEC Power Supply Participants

FROM: Patrick E. McCullar, President

SUBJ: Alternative Assignment to replace Letter of Credit Financing

I have been working with PJM and Dave Swayze, our Delaware counsel, to develop an assignment document that the participating members could legally execute to provide a no-cost financial security document that PJM can accept in place of our existing letter of credit. DEMEC holds an \$8 million dollar credit line at PJM, and the letter of credit DEMEC has provided to PJM increases that to \$18 million. However, there is an annual cost of approximately \$35,000 to maintain the letter of credit facility. The adoption of the proposed assignment document by the members will save DEMEC and the members this \$35,000 annual expense.

While DEMEC can continue to maintain the letter of credit, the assignment document provides a firmer credit enhancement at no cost to the members or DEMEC. PJM credit rules allow parental guaranty documents to support member credit. Since each DEMEC member is a "parent" of DEMEC, it is possible for each member to execute a guaranty of payment of DEMEC obligations to PJM. This agreement with PJM, and the execution of the individual guaranty by the DEMEC members, will allow DEMEC's credit line at PJM to be supported by its members and set at a dollar level adequate to support our activities and obligations to PJM at no additional cost to DEMEC or its members.

The attached Assignment document has been approved as legal and binding by Dave Swayze. The assignment is an affirmation to PJM of the obligation each member already has to DEMEC under the FULL REQUIREMENTS POWER SALES, TRANSMISSION, AND AGENCY SERVICES AGREEMENT that each member executed with DEMEC in October, 2003.

If this proposal meets with your agreement, I request that each member ask their governing body to adopt an ordinance or resolution approving the execution of the assignment at their next regular meeting. I have attached an assignment document and suggested draft resolution/ordinance document for your modification and use. Please contact me and advise the date of your next regular meeting so that I can provide any assistance to finalize documents in a timely manner.

Attachments



DEMEC Member's Proposed Credit Support Cap Amounts 10/2005:

Clayton	\$ 250,000.00
Middletown	\$ 2,500,000.00
Milford	\$ 4,000,000.00
Newark	\$ 9,000,000.00
New Castle	\$ 1,750,000.00
Seaford	\$ 2,000,000.00
Smyrna	\$ 1,750,000.00
Total Credit Support	<u>\$ 21,250,000.00</u>